(3)

Supreme Court, U.S.
FILED
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No. 01-1794

IN THE

Supreme Court of the United States

Jose Melendrez, Jr.,

Petitioner,

vs.

Francis E. Seib, Drug Enforcement Administration, Head DEA Agent in charge of Eagle Pass, Texas, in his official capacity; Moses Pena, Drug Enforcement Administration, DEA Agent in Eagle Pass, Texas, in his official capacity; Larry Leon, Drug Enforcement Administration, former DEA Agent in Eagle Pass, Texas, not in San Antonio, Texas, in his official capacity; Tony Quintanilla, former County Investigator of Zapata County, now a U.S. Border Patrol Agent in Fort Hancock, Texas, in his official capacity; Arnoldo Ramos, Sergeant/Investigative Department of Public Safety in Del Rio, Texas, in his official capacity; United States of America,

Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITIONER'S REPLY BRIEF IN OPPOSITION TO RESPONDENT TONY QUINTANILLA

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision that Plaintiff - /Appellant/Petitioner's lawsuit or claims were filed under the Federal Tort Claims Act ("FTCA"), 42 U.S.C. & 1983 and Bivens v. Six Unknown named Agents, 403 U.S. 388 (1971).

II. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision that Melendrez's Tort Claim did not require the tolling statute and therefore being time-barred.

III. Whether the U.S. Court of Appeals was in error to AFFIRM the lower courts decision based on HECK RULE.

IV. Whether the U.S. Court of Appeals was in error not to CONSIDER Melendrez's arguments that the district judge should have recused himself.

V. Whether the U.S. Court of Appeals was in error not to ENTERTAIN Plaintiff/ Petitioner's Supplemental Motion.

REPLY BRIEF OF PETITIONER

The Petitioner hereby submits his REPLY BRIEF in the above- captioned matter.

FIRST ISSUE

The Petitioner "OBJECTS" to Respondent, Tony Quintanilla's "BRIEF IN OPPOSITION", on pages 1,2. and 3 on Paragraph (A). **The Claim is Barred by Limitations.**

ARGUMENT

With respect to the tolling of statute of limitations the Petitioner cited several case law and presented evidence to support his allegations, but the lower Courts did not review or examine the Petitioner's relevant cited case law and evidence in the record..

Therefore, the Petitioner Cites Taliaferro v. Dykstra, 388 F. Supp. 957 (1975) and Mizell V. North Broward Hospital District, 427 F.2d 468 (5th Cir. 1970) in addition, this case law was cited on EXHIBIT # 15, entered as evidence to oppose the U.S. Memorandum and Application for order and Substitution Motion. In addition, the above-mentioned case law was cited by the Petitioner on Page 6, and 7 on the Petitioner's "OBJECTIONS" to the REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (DENNIS GREEN).

Moreover, on the above-mentioned case law it clearly states, in the matter at bar, the Court finds Plaintiff Schotta began,

even prior to the official termination of her employment by VPI on June 6, 1971, to pursue the only administrative remedy then available to her. Moreover, throughout the ensuing nearly two-year period prior to instituting this action, **she made numerous attempts to accelerate the investigation HEW had undertaken in response to her complaint. The Court also finds that the DEFENDANTS were PLACE ON NOTICE of the INVESTIGATION no later than November 8, 1971, the day on which defendants were FURNISHED a copy of Plaintiff Schotta's complaint upon the arrival of HEW'S investigators on the campus. Citing Taliaferro v. Dykstra, 388 F. Supp. 957 (1975) and Mizell v. North Broward Hospital District, 427 F.2d 468 (5th Cir. 1970)citing Burnette v. New York Central R. Co., 380 U.S. 424, 428, 85 S.Ct.1050, 1054, 13 L.Ed.2d 941 (1965). See Also Exhibit #14** and #15, entered as EVIDENCE to oppose the U.S. Memorandum and Application for Order and Substitution Motion, in which , EXHIBIT #14 presents a pattern of **misleading statements made by the United States Attorneys Office in San Antonio, Texas., into allowing the filing deadline to pass. And consequently, the Petitioner was led to believe that the U.S. Attorney's Office would eventually help the Petitioner as time permitted. (See Exhibit #14 - consists of 10 pages of responses made by the U.S. Attorney's Office in San Antonio, Texas.** In addition, the Defendants were placed on notice of Petitioner's complaint on June 5, 1997 less than a year after the Petitioner was imprisoned. See Also Exhibit #14 and Exhibit #18

to prove the Petitioner's allegations and claims. Moreover, there are responses from the U.S Attorney's Office in San Antonio, Texas dated April 8, 1999 and July 12, 1999, in which it clearly states that **"Mr. Sepeda will look into the matters you allege as time permits. As I told your sister, the Del Rio Division likely will prosecute more than 1,000 defendants during 1999. Mr. Sepeda or someone in his office will eventually respond to your letter.** With this in mind , the Petitioner was surely being mislead induced and tricked by the adversary party into believing that Petitioner's case and allegations were surely going to be investigated. Therefore, Petitioner was forced to file the instant civil action a year later after waiting for the U.S.Attorney's Office to RESPOND to Petitioner's claims and allegations.

Wherefore, the Petitioner followed the same pattern of enunciated principles on the above-mentioned case law and followed the "ONLY ADMINISTRATIVE REMEDY AVAILABLE TO THE PETITIONER AT THAT POINT IN TIME". However, the lower Courts did not review or examine the evidence in the record. The evidence in the record (29-total exhibits entered as evidence to OPPOSE the U.S. Memorandum and Application for Order and Substitution motion is being cited on every OPPOSING DOCUMENT FILED by the Petitioner in the instant case, and was cited to avoid redundance in the lower Courts and now will also be cited in the U.S. Supreme Court to prove and certify the Petitioner's allegations and claims against all of the Defendants..

In addition, the Opposing counsels' for all of the Named Defendants in the instant civil action never OPPOSED or OBJECTED to the Petitioner's 29-total exhibits entered as evidence to OPPOSE the U.S. Memorandum and Application for Order and Substitution Motion and were all served with this evidence via-certified mail. See also, Petitioner's Motion to Supplement the Records (Certified Receipt and Certificate of Service).

With respect to Respondent Tony Quintanilla's claims on page 2, paragraph 1 on Respondent's Brief in Opposition, the Petitioner "OBJECTS", the U.S. Attorney's Office was still INVESTIGATING the Petitioner's case on April 8, 1999 and July 12, 1999, according to the U.S. Attorney's Office in San Antonio, Texas, (Citing Exhibit #14), and was deliberately and intentionally being mislead (induced, tricked) by the adversary party into believing that the Petitioner's case was being investigated.(Citing Irwin v. Dep't of Veterans Affairs, 498 U.S. 89 (1990).

In any event, "IF" the U.S. Attorney's Office in San Antonio, Texas would have terminated the investigation on July 12, 1999, the Petitioner would still have ample time (July 12, 2001) to file the instant civil action because the case was still being investigated, but since the U.S. Attorneys Office never filed or denied the Petitioner's claims and allegations the U.S. Attorney's Office in San Antonio, Texas and Del Rio, Texas were clearly misleading the Petitioner in the instant case.

In addition, the Petitioner did file a written complaint to the appropriate federal agency with-in the two-year statute of limitations period(June 5, 1997) with-in a year of Petitioner's conviction(June 6, 1996), in this case, the U.S. Attorney's Office in San Antonio, Texas and Del Rio, Texas. (Citing Exhibit #14 and Exhibit #18).

Consequently, the Petitioner's claims are based on **Abuse of Process and Negligent Misrepresentation** because the law was established in the **Fifth Circuit Court of Appeals** in 1965, which clearly states that there can be no indictable conspiracy with a government informer (Citing SEARS V. UNITED STATES 343 F.2d 139 (5th Cir.1965). If the Law was well established since 1965 not to convict the Petitioner of Conspiracy to Distribute Marijuana with Gusdalupe Garza and others it was foreseeable not only to the Defendants but to the U.S. Attorney's Office, U.S. Magistrate Judge, and the U.S. District Judge not to convict the Petitioner on a conspiracy charge, however, the Defendants and the lower courts deviated from the enunciated principles set-forth in Sears v. United States, 343 F.2d 139(5th Cir.1965), and that is why the Petitioner is charging the Defendants with **Abuse of Process and Negligent Misrepresentation**. (See also Exhibit #1).

Consequently, there is no record that the Defendants and lower Courts **opposed, objected, or ruled on** the Petitioner's above-mentioned case law. And have deliberately overlooked the Petitioner's claims, allegations and relevant case law.

SECOND ISSUE

With respect to Respondent Tony Quintanilla's Brief in Opposition, the Petitioner "OBJECTS" on pages 3 And 4 Paragraph (B) The Courts below Properly construed Petitioner's allegations.

ARGUMENT

Consequently, Defendant Tony Quintanilla claims that no theory of liability was made against him by the Petitioner and therefore should be deemed to have waived any such claim. In such case, he no longer has any cause of action against Quintanilla.

Consequently, Respondent Tony Quintanilla is very well mistaken and it is clear that Quintanilla did not read the Petitioner's arguments on Petitioner's Jose Melendrez Jr's Opposition to Defendant Tony Quintanilla's Original Answer on pages 17, 18, and 19 paragraph (23). In which, it clearly addresses Quintanilla's involvement with federal law enforcement agencies (lending credebility to the governments case against the Petitioner). In addition, Respondent Quintanilla was working in concert with the DEA Government agents and the Petitioner cited several case law starting with Thompson v. United States, cite as 504 F. Supp 1087 (1980), Martarano v. United States, 231 F. Supp 805 (D.Nev. 1964), and United States v. N.A. Degerstrom, Inc. 408 F.2d 1130 (th Cir. 1969), which falls within the ambit of 28 U.S.C.A && 1346(b), 2671. To support Petitioner's claims and allegations.

Consequently, the lower courts did not review, examine, or ruled on whether Respondent Tony Quintanilla was working as an "Employee of the Government", in addition, there is no record that the lower courts ever questioned Quintanillas involvement in the instant case, however, the lower Courts did manage to state that Petitioner was trying to assert a 28 U.S.C.A & 1983 claim against Respondent Tony Quintanilla, when in reality, the Petitioner never did file under 1983. The Petitioner raised the ISSUE that Respondent Tony Quintanilla was an "Employee of the Government", as OPPOSED to a 1983 Civil Action.

THIRD ISSUE

With respect to Respondent Tony Quintanilla's Brief in Opposition, the Petitioner "OBJECTS" on page 4 and 5 paragraph C. Petitioner has no Tort Claim so long as conviction stands.

ARGUMENT

With respect to HECK RULE , Heck v. Humphrey, (1994), 512 U.S. 477, 129 L.Ed.. 383, 114 S.Ct 2364m the majority states clearly that Justice Souter's discussion of abuse of process, post, at 494-495, 129 L.Ed., at 399, does not undermine this principle. It is true that favorable termination of prior proceedings is not an element of that cause of action - but neither is an impugning of those proceedings one of its consequences. The gravamen of that tort (Abuse of Process) is not the wrongfulness of that prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends. ID. At 394 NOTE 7(b).

That's exactly the Petitioner's Jose Melendrez Jr., instant civil lawsuit is based on abuse of process where the Defendants deviated from the instructions of Sears v. United States, 343 F.2d 139, 142 (5th Cir. 1965) (Fifth Circuit Court of Appeals). **Not to seek an indictment against the Petitioner Jose Melendrez Jr., based on Conspiracy with Guadalupe Garza and said others. In addition, the Petitioner cited HECK RULE on Petitioner's Petition for Writ of Certiorari on page 16, 17 and 18.**

Therefore, the Petitioner would ask the U.S. Supreme Court to correctly interpret the TORTS of Abuse of Process and Malicious Prosecution for the Defendants and the lower Courts because the Petitioner has repeatedly explained the differences on the Petitioner's "OBJECTIONS" to the Report and Recommendation of the United States Magistrate Judge on pages 14 and 15. See Also Petitioner's Petition for Writ of Certiorari on pages 16, 17, and 18. In addition, on Petitioner's Reply Brief in the U.S. Court of Appeals on page 8 paragraph 2,3,4,and 5.

Consequently, the Respondent Tony Quintanilla is very well mistaken because under Abuse of Process the Petitioner has a Tort Claim and has a legal claim against all of the named Defendants in this case and **does not have to prove that his conviction has been terminated in his favor.**

FOURTH ISSUE

With respect to Respondent Tony Quintanillas Brief in

Opposition, the Petitioner "OBJECTS" on page 5 and 6 paragraph (D). No entitlement to Recusal Absent Proper Motion.

ARGUMENT

This argument is well argued on Petitioner's Petition for Writ of Certiorari on Pages 18 & 19.

FIFTH ISSUE

With respect to Respondent Tony Quintanillas' Brief in Opposition, the Petitioner "OBJECTS" on pages 6 and 7 paragraph E. There was no need to supplement the Record.

ARGUMENT

This Argument is well argued on Petitioner's Petition for Writ of Certiorari on pages 20, 21, 22, 23 and 24. However, the Petitioner would advice the U.S. Supreme Court to review and examine Petitioner's Original Motion to Supplement the Record because according to the District Court(clerk) Petitioner did not file Exhibits entered as evidence to Oppose the U.S. Memorandum and Application for Order. See Petitioner's Original Motion to verify if all exhibits entered as evidence are in the Honorable Court of Appeals Records filed by the Petitioner on September 18, 2001. See also, Petitioner's Appendix on the Petitioner's Petition for Writ of Certiorari (Appendix E).

Wherefore, the Petitioner seeks 5 million dollars because all of the Named Defendants in the instant matter **did not follow the principle enunciated by the Fifth Circuit Court of Appeals in the case Sears V. United States, 343 F.2d 139 (1965).**

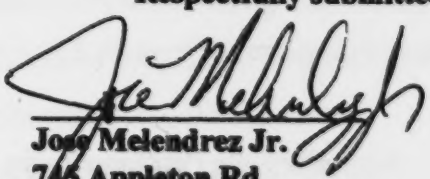
Consequently, **the Petitioner would have never been put in prison for Conspiracy with Guadalupe Garza and said others, and therefore, Petitioner SUSTAINS Mental Anguish, Stress, Emotional Distress, and Loss of Liberties SINCE June 6, 1996 thru the Present date and further FUTURE supervised release because of Defendants Moses Pena, Larry Leon, Francis E. Seib, Arnoldo Ramos, and Tony Quintanilla's "Intentional", "Deliberate", and "Reckless Conduct" that "CAUSED THE PETITIONER"S INJURIES MENTIONED HEREIN".**

CONCLUSION

BASED ON THE FOREGOING, Petitioner respectfully requests the U.S. Supreme Court to **GRANT** the Petitioner's Petition for Writ of Certiorari. If errors in the law were committed by the Fifth Circuit Court of Appeals, in essence, Petitioner respectfully requests the U.S. Supreme Court to **REVERSE** the U.S. Court of Appeals (Fifth Circuit) **DECISION** and **remand the case back with instructions to the District Court.**

DATED: July 1, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true copy of the Petitioner's Jose Melendrez Jr's., **"Reply Brief"** was mailed on the date indicated below to the following persons:

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The original and 40 copies of the same material have been mailed by U.S. Postal Service and Certified Returned Receipt on the date indicated below to the Honorable Clerk of Court for the Supreme Court of the United States.

Dated: July 1, 2002

Jose Melendrez Jr.

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